

THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of )  
Leslie S. Marco et al. ) Group: 3721  
Serial No.: 10/681,524 )  
Filed: October 8, 2003 )  
Title: TOP LIFT CARRIER AND METHOD OF ) Examiner: Tawfik, Sameh  
MANUFACTURE THEREFOR )

**PRE-APPEAL BRIEF REQUEST FOR REVIEW**

Mail Stop AF  
Commissioner for Patents  
P.O. Box 1450  
Alexandria, VA 22313-1450

Sir:

Applicants request review of the final rejection in the above-identified application. No amendments are being filed with this request. This Pre-Appeal Brief Request for Review is being filed concurrently with a Notice of Appeal from the Examiner's decision dated June 20, 2008, finally rejecting claims 1-13, which are all of the claims that remain pending in this application.

Claims 1-13 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over U.S. Patent 5,868,659 (Slomski) in view of U.S. Patent 5,487,465 (Broskow). The review panel is requested to review the legal and factual basis of the rejection for the reasons stated below.

**The Examiner Has Applied the Teachings of the Cited References  
Inaccurately Against Recitations in the Pending Claims**

In discussing claim 1, the Examiner states that Slomski teaches "the holes and the first row of apertures formed in substantially the same configurations, see for example (Fig. 4)." In discussing independent claim 8, the Examiner states that Slomski discloses "forming a first row of container receiving apertures in the carrier sheet... and simultaneously forming holes in the first handle portion of the handle sheet similarly shaped to the first row of apertures (Figs. 3 and 4)." However, in looking at Figs. 3 and 4 of Slomski, no holes in the handle portion 26 are shaped similarly to the container receiving apertures of the container engaging portion 24. The container receiving apertures are substantially rectangular openings in the carrier sheet, and the holes in the

handle sheet are long and narrow, with the outer holes being a flattened L-shape and a central hole being an elongated, thin slit. Clearly the apertures in the carrier sheet and the holes in the handle sheet are not “formed in substantially the same configurations” as recited in claim 1, or “similarly shaped” as recited in claim 8. Accordingly, Slomski does not teach what the Examiner states, and rejections based thereon are not properly supported.

The Examiner states that the Broskow process teaches “cutting through overlying portions of the handle sheet and the carrier sheet to form holes and row of apertures in overlying arrangement, see for example (Fig. 5; via stamping die 64 cutting through overlying portions...)”. Applicants respectfully submit that Broskow does not teach what the Examiner says it teaches. Broskow does not teach a separate handle sheet and a separate carrier sheet, which the claims require. Broskow teaches two identical sheets each having a handle portion and a container receiving portion. A carrier portion of one sheet overlies a carrier portion of the other sheet, and a handle portion of one sheet overlies a handle portion of the other sheet. Accordingly, contrary to the Examiner’s statement, Broskow does not teach cutting through overlying portions of the handle sheet and the carrier sheet to form handle portion holes and rows of apertures in overlying arrangement. No where in the teaching of Broskow do container receiving apertures overlie holes in a handle sheet. The holes of the handle portion and the apertures of the carrier portion are not of similar shape. Broskow does not teach what the Examiner states and rejections based thereon or not properly supported.

#### **The Single Rejection Based On Slomski and Broskow Ignores Claim Limitations**

Independent Claim 1 recites in part:

**said step of forming holes in the handle sheet and said forming the first row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of said handle sheet and said carrier sheet and thereby forming said holes and said first row of apertures in overlying arrangement and in substantially the same configurations one over the other.**

Independent claim 8 recites in part:

**forming a first row of container receiving apertures in the carrier sheet outwardly from the first line of attachment and simultaneously forming holes in the first handle portion of the handle sheet similarly shaped to the first row of apertures, said step of forming holes in the first handle portion of the handle sheet and said forming the first row of container receiving apertures in the carrier sheet being performed by**

cutting through overlying portions of the carrier sheet and the handle sheet to form the holes in the first handle portion and the first row of apertures in overlying arrangement and of substantially the same configurations;

forming a third row of container receiving apertures in the carrier sheet outwardly from the second line of attachment and simultaneously forming holes in the second handle portion of the handle sheet similarly shaped to the third row of apertures, said step of forming holes in the second handle portion of the handle sheet and said forming the third row of container receiving apertures in the carrier sheet being performed by cutting through overlying portions of the carrier sheet and the handle sheet to form the holes in the second handle portion and the third row of apertures in overlying arrangement and of substantially the same configurations;

The pending claims recite a method having specific steps and sequences not taught by the prior art for making a carrier having improved features. Neither Slomski, Broskow or the combination thereof teaches a process or a carrier in which a separate and distinct handle sheet and a separate and distinct carrier sheet are provided in overlying arrangement, and wherein container receiving apertures in the discrete carrier sheet and holes in the discrete handle sheet are formed one above the other and in substantially the same configurations. Neither reference alone or in combination teaches the very distinct process steps and sequences recited in the pending claims, to provide a carrier that can be produced efficiently while using materials that can be different for both the carrier sheet and the handle sheet to optimize the performance of each.

#### **The Examiner's "Response to Arguments" Contradicts Claim Limitations**

In responding to Applicants arguments, the Examiner maintains that Broskow discloses the step of overlying two separate sheets because he broadly considers sheet 60 as a carrier sheet and sheet 58 as a handle sheet, and Broskow teaches cutting through the sheets to therefor form handle and row of container receiving apertures. However, this "broad interpretation" contradicts limitations in the independent claims. Claim 1 clearly recites "forming a container holding portion only in the carrier sheet" and "forming a handle portion only in the handle sheet". No matter how broadly the Examiner construes Broskow, these limitations are not met because each sheet 60 and sheet 58 includes both a handle portion and a container holding portion. Accordingly, Broskow cannot teach forming holes in the handle sheet and apertures in the carrier sheet performed by cutting through overlying portions of the handle sheet and carrier sheet as required by both claims 1 and 8.

**The Examiner Misapplies Teachings of the Prior Art to the Dependent Claims**

Regarding claim 3, the Examiner states that Slomski discloses “removing a portion of the handle sheet between the first and second spaced lines of attachment, see for example (Fig. 4; via by removing portions of handle 26 between two connecting lines 38), to define first and second handle sheet portions separate from each other (via sequence of handle sheet portions 26).” Fig. 4 of Slomski shows a series of carriers being formed, each carrier having a handle portion and a container receiving portion. In contrast, the present pending claim 3 recites a method to produce a carrier which includes two handle sheet portions for the single carrier. Slomski does not teach a carrier having multiple handle sheet portions, only a series of carriers, with each carrier having a handle portion.

Regarding Fig. 4, the Examiner states that it would have been obvious to modify the teaching of Slomski in view of Broskow by having a third row of apertures in the carrier sheet since it is a mere duplication of essential working parts. However, claim 4 recites more than the mere addition of additional essential working parts. Claim 4 recites a method of making a carrier which includes three rows of container receiving apertures (not taught by either Broskow or Slomski) with first and second handle portions (not taught by either Slomski or Broskow) for a single carrier; and positional relationships between the handle portions and the rows of container receiving apertures (not taught by either Slomski or Broskow).

With respect to claim 5 the Examiner states “Slomski discloses the step of forming holes in the handle sheet simultaneously with forming the apertures, see for example (Fig. 4).” However, as with the discussion of claims 1 and 8 above, Slomski does not teach forming any container receiving apertures of a carrier sheet or carrier portion in overlying arrangement with holes in a handle sheet or handle portion.

With respect to claim 6 the Examiner states “Slomski discloses a step of forming first and second handles in the handle sheet (via multiple forms of 26).” However, claim 6 recites first and second handles in the handle sheet of a single carrier, not for multiple carriers as taught by Slomski. Nothing in Slomski teaches multiple handles for a single carrier.

With respect to similar limitations in claim 8, the Examiner again confuses the teaching of Slomski for multiple carriers each having a handle portion with the recitations in the present claims for multiple handle portions on a single carrier. Claim 8 recites the positional

relationships between multiple rows of container receiving apertures and first and second handle portions created from a single handle sheet for a single carrier. Nothing in the teaching of Slomski alone or in combination with Broskow teaches a method for producing such a structure.

### **Conclusion**

It is respectfully submitted that the Examiner has misapplied the teachings of the prior art against the limitations of the pending claims. The Examiner has used a combination of hindsight and selective identification of features in the references with disregard for the overall teaching of the prior art individually and collectively. For the foregoing reasons, Applicants submit that no combination of the cited references teaches, discloses or suggests the subject matter of the pending claims, and that the Examiner's conclusions about and application of the teachings of Slomski and Broskow are not proper, and do not meet the limitations recited in the pending claims.

The review panel is requested to remove all rejections and indicate the allowance of all pending claims. Consideration and allowance are respectfully requested.

In the event Applicant has overlooked the need for an extension of time, additional extension of time, payment of fee, or additional payment of fee, Applicant hereby conditionally petitions therefor and authorizes that any charges be made to Deposit Account No. 20-0095, TAYLOR & AUST, P.C.

Respectfully submitted,

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